Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1995

JERRY WAYNE DAYTON,

Petitioner,

v.

THE STATE OF GEORGIA,

Respondent.

On Petition For Writ Of Certiorari To The Georgia Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether state law enforcement officers violated the United States Constitution's Fourth Amendment protection against unreasonable searches and seizures when the officers, acting randomly and without probable cause, stopped, boarded and searched the vessel of the Petitioner while he was operating it in an inland state waterway without ready access to the open sea?

LIST OF PARTIES

The parties to the proceedings below and in this Court are the Petitioner, Jerry Wayne Dayton, and the Respondent, The State of Georgia.

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DECISIONS BELOW

The opinion of the Georgia Court of Appeals affirming the judgment of the trial court has been reprinted in the Appendix hereto, page la. Also, the order denying a rehearing by the Georgia Court of Appeals and the subsequent denial of Petition for Writ of Certiorari by the Georgia Supreme Court are reprinted in the Appendix at 3a and 4a, respectively.

STATEMENT OF JURISDICTION

The Petitioner petitions this Court for a Writ of Certiorari following the denial of his petition for a Writ of Certiorari by the Georgia Supreme Court (Case number A94A1542) on May 5, 1995. The instant Petition for Certiorari is timely based upon Sup. Ct. R. 13. The Petitioners have invoked the jurisdiction of this Court pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

Fourth Amendment to the United States Constitution

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but on probable cause supported by oath of affirmation and particularly describing the place to be searched and the persons or things to be seized."

Fourteenth Amendment to the United States Constitution

(In pertinent part) "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

O.C.G.A. § 52-7-25 Enforcement of Article

(a) Any person empowered to enforce this article and any rule or regulation adopted pursuant hereto shall have the authority to stop and board any vessel subject to this article or any such regulation for the purpose of inspection or determining compliance with this article and is empowered to issue a summons for appearance in court or before a magistrate for all violations of this article or of the rules and regulations prescribed hereunder. Vessels of law enforcement personnel shall be marked to identify them as designated enforcement vessels.

(b) An officer empowered to enforce this article shall have the power:

(1) To arrest on view for any violation relating to boating and all rules and regulations prescribed by the board under this article;

(2) To execute all warrants and search warrants for violations of the boat laws and regulations.

(3) To serve subpoenas issued for the examination, investigation, and trial of all offenses against the laws and regulations relating to boats;

(4) To board vessels in use, for purposes of examining any documents and safety equipment, and to search without warrant any vessel which is not at its regular mooring or berth when he believes that any law of this state or any rule or regulation of

the Board of Natural Resources relating to boating has been violated;

(4.1) To board vessels in use or floating, whether moored or not, for purposes of examining any marine toilets, holding tanks, and documents related to them, including records of pump-out and certificates of compliance, and to search without warrant any such vessel to determine compliance with the provisions of this article related to marine toilets when the officer believes that any of said provisions of this article relating to marine toilets have been violated;

(5) To detain the vessel and arrest the operator of a suspected stolen vessel;

(6) To enter upon any land or water in the performance of his duty;

(7) To demand and secure proper assistance in case of emergency;

(8) To exercise the powers and duties of peace officers; and

(9) To investigate any boating accident which occurs on the waters of this state.

(c) Every vessel subject to this article if underway and upon being hailed by a designated law enforcement officer shall stop immediately and lay to or shall maneuver in such a way as to permit the officer to come aboard.

(d) Any person employed or elected by this state or a political subdivision thereof, whose duty it is to preserve the peace or to make arrests or to enforce the law, including, but not limited to, members of the sheriffs' departments, state patrolmen, and conservation rangers, are empowered to enforce this article. The Department of Natural Resources shall be primarily responsible for enforcement of this article and the rules and regulations issued under this chapter.

(e) It shall be unlawful for any person to resist or interfere by force, menace, threat, or in any other manner with any arrest for violation of this article. It shall also be unlawful for any person to refuse to go with any law enforcement officer of this state after an arrest has been made or to interfere with the officer in the performance of his duty.

(f) The department is authorized and empowered to identify by appropriate signs and markers those public waters in which certain activities may be prohibited or restricted.

STATEMENT OF THE CASE

Petitioner, while operating his boat on a Georgia lake on August 2, 1992, was stopped by two rangers from the state Department of Natural Resources. The rangers stated that they had no probable cause to stop Petitioner, that their stop was random, that he was operating his boat safely, and that he was obeying all boating laws.

Petitioner was given an intoximeter test and was subsequently arrested and charged with Boating under the Influence (BUI). Petitioner moved to suppress evidence of the intoximeter test on October 1st, 1992, arguing that the search conducted by the rangers violated both the Fourth Amendment to the United States Constitution and the Georgia Constitution. His motion, however, was denied.

At trial on April 19, 1993 and April 20, 1993, the rangers testified that they stopped the Petitioner to check his boat registration (documents) and safety equipment (fire extinguisher and life preservers) and that Petitioner was operating his boat safely and obeying boating laws. The rangers also testified that they saw nothing in the operation of Petitioner's boat that indicated that he was an unsafe boater, that he cooperated in all respects with the officers, and that both his boat registration and safety equipment were satisfactory.

At the conclusion of the trial, Petitioner was found guilty of BUI. Petitioner appealed his conviction to the Georgia Court of Appeals, which transferred the constitutional issue relating to the legality of the rangers' search to the Georgia Supreme Court, which has exclusive appellate jurisdiction over such issues. Petitioner argued that the correct statutory construction of O.C.G.A. § 52-7-25 required that subsection (b)(4) be read as a limitation of the general grant of power or authority in subsection (a) and that therefore the rangers were not authorized to stop, detain, or investigate the petitioner unless they believed that some law of the state or rule or regulation of the Board of Natural Resources had been or was being violated. Accordingly, the petitioner argued, stopping and searching his boat without probable cause

or articulable suspicion or grounds to believe he had committed a violation was not authorized by O.C.G.A. § 52-7-25. However, if the statute was not so construed, such random search and seizure violated the Georgia Constitution and the Fourth Amendment to the United States Constitution and that the evidence arising therefrom was illegally obtained and should have been suppressed.

The Georgia Supreme Court, for unspecified reasons, returned the appeal to the Appeals Court, which concluded, by virtue of the return alone, that there was no constitutional issue for resolution. (See Appeals Court Opinion in Appendix, page 1a). As a result, on February 6, 1995, the Appeals Court affirmed the judgment of the trial court. Petitioner filed a motion for reconsideration which was denied on February 27, 1995. Thereafter, the Georgia Supreme Court denied Certiorari on May 5, 1995.

REASONS FOR GRANTING

THE GEORGIA RANGERS' STOP AND SEARCH OF PETITIONER'S BOAT WITHOUT PROBABLE CAUSE OR REASONABLE SUSPICION OF WRONGDOING VIOLATED THE FOURTH AMENDMENT'S PROTECTION AGAINST UNREASONABLE SEARCHES AND SEIZURES, AS APPLICABLE TO THE STATES THROUGH THE FOURTEENTH AMENDMENT, AND RENDERED ANY EVIDENCE OBTAINED THEREFROM INADMISSABLE.

A. The Petitioner's Argument is Consistent with Current Fourth Amendment Caselaw Concerning the Constitutionality of Random Stops.

Under prevailing Fourth Amendment Doctrine, "the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interest against its promotion of legitimate governmental interests." *Delaware v. Prouse*, 440 U.S. 648; see also *Camara v. Superior Court*, 387 U.S. 523 (1987).

In interpreting this balancing test, the court held in *Prouse* that patrolmen may not stop motorists at random to inspect their drivers' licenses absent some specific, articulable suspicion of wrongdoing. The court noted that "the 'grave danger' of abuse of discretion does not disappear simply because the automobile is subject to state regulation." at 662 (quoting *United States v. Martinez-Fuerte*, 428 U.S. 544. There is a clear analogy between the automobile cases and the present boat case. As with

automobiles, randomly stopping boats on state waterways encroaches on an individual's reasonable expectation of privacy and creates the danger for potential abuse by state officers.

As opposed to the completely random stop, the United States Supreme Court held that alternative methods such as spot checks and roadblocks, which involve less intrusion, could accomplish the state's interest in auto registration and safety laws without infringing too substantially on an individual's privacy interest. *Martinez-Fuerte*, 428 U.S. 543; see also *Michigan Police v. Sitz*, 490 U.S. 449 (1990).

With regard to watercraft, the United States Supreme Court has carved out an exception to the probable cause test for waterborne vessels operating on waters which provided ready access to the open sea. In *United States v. Villamonte-Marquez*, 462 U.S. 579 (1983), the Court held that customs officials acting pursuant to a statute authorizing customs officers to board any vessel at any time to examine the vessel's manifest, did not violate the Fourth Amendment by boarding a vessel that was located in waters providing ready access to the open sea. The court created this exception because "customs officials do not have as a practical alternative the option of spotting all vessels which might have come from the open sea." *Villamonte-Marquez*, at 589. The court clearly articulated that the exception was limited to vessels operating in areas with ready access to the open sea because, with inland waterways, checkpoints and other practical alternatives do exist: "rivers, canals, and the like which are much more analogous to roads and make the "roadblock" approach more feasible, such is not the case in waters

providing access to the seaward border beyond which is the open sea." *Id.* Applying this reasoning to the present case, state officers could have easily set up fixed checkpoints along or around channels or around the entrances to ports, harbors, and docks in order to perform document and safety checks, or by the use of an "Area Warrant." *United States v. Almeida-Sanchez*, 413 U.S. 266 (1973). Alternatively, state officers could reasonably refrain from acting until they have reason to believe a violation is occurring or has occurred because as the court noted in *Prouse*, "drivers without licenses are presumably the less safe drivers whose propensities may well exhibit themselves." *Id.*, at 659. *Klutz v. Beam*, 374 F. Supp. 1129 (W.D.N.C.1973).

B. In The Context Of Private Watercraft Operating On Waterways Which Provide No Ready Access To The Open Sea, Balancing the Governmental Regulatory Interest In Random, Suspicionless Stops Against The Individual's Fourth Amendment Interest In Privacy And Security Favors A Finding That Such Stops Are Unconstitutional.

The state government's interest in these random intrusions must outweigh the individual's privacy interest. In the present case, the state's interest is far less important than the federal government's interest in *Villamonte-Marquez* where the documentation laws served as:

> "the linchpin for regulation of participation in certain trades such as fishing, salvaging, towing and dredging . . . and allow for regulation of imports and exports (and) play a vital role in the collection of customs duties and tonnage

> duties." Id. at 591. The Court also noted that the federal interest was strong enough in waters close to the open sea to overcome the Fourth Amendment "where the need to deter and apprehend smugglers is great." *Id.* at 593.

Most of these interests disappear or are greatly reduced within the context of inland state waterways used almost exclusively by recreational boaters. State lakes are rarely used commercially for transporting cargo. *United States v. Gollwitzer*, 697 F.2d 1357 (11th Cir. 1983). Therefore, state concerns in enforcing laws in the areas of international customs duties, contraband, and smuggling are reduced exponentially and, thus, the state's interest, taken as a whole, is lessened to the point that it is overcome by the individual's privacy interest. While the state's interest in vessel identification and safety is important, fixed checkpoints could fulfill the government's interest while allowing boaters the degree of privacy envisioned by the Fourth Amendment. As the court noted in *Prouse*, a "marginal contribution" to safety "cannot justify subjecting every occupant of every vehicle to a seizure . . . at the unbridled discretion of law-enforcement officials." *Prouse*, at 654.

The second element of the Fourth Amendment's balancing test, the individual's interest against governmental intrusion also favors the Petitioner's assertion that his Fourth Amendment rights were violated. An individual's "reasonable expectation of privacy" (*Katz v. United States*, 389 U.S. 347 (1967)) can vary depending on the area or right encroached upon. The reasonable expectation of privacy for an individual on a boat is equal to or

greater than the expectation of privacy in an automobile. *United States v. Cadena*, 588 F.2d 100 (5th Cir. 1979).

First, as private homes have a higher expectation of privacy than automobiles, so too should boats incapable of ocean travel, as individuals often reside in houseboats or small pleasure craft located on inland lakes. *Id.*, at 101; *United States v. Gollwitzer*, 697 F.2d 1357 (11th Cir. 1983). As hereinbefore indicated, these boats do not normally operate commercially, so "their reasonable expectation of privacy is greater than the degree of privacy enjoyed by sailors on board large fishing boats or yachts which are capable of ocean travel and commonly carry illicit cargo." *Gollwitzer*, 697 F.2d at 1360. Allowing those who live on such vessels to be subjected to potential abuses of the unbridled discretion of state officers runs contrary to the purpose of the Fourth Amendment "to safeguard the privacy and security of individuals against arbitrary invasions" *Camara v. Municipal Court*, 387 U.S. 523 (1967).

Second, unlike an automobile which often serves as simply "a basic, pervasive and often necessary mode of transportation," *Prouse, supra*, at 662, a boat is used for more intimate and private type of leisure. As the Fifth Circuit articulated in *Cadena*: "there is hardly the expectation of privacy even in the curtained limousine or the stereo-equipped van that every mariner or yachtsman expects aboard his vessel." *Cadena*, at 101. Entire families seek the togetherness and solitude available on their boats. Because lakes, rivers, and streams are much less crowded and subject to much less traffic than roads, the passengers in a boat reasonably expect a greater degree of privacy and intimacy than in an automobile.

CONCLUSION

The Georgia Courts erred in denying the Petitioner's Motion to Suppress and subsequent constitutional challenges. An individual's reasonable expectation of privacy in the operation of recreational watercraft on inland state waterways is equal to or greater than an individual's privacy interest in operating an automobile. In contrast, the state's interest in conducting document and safety inspections on inland state waterways, as opposed to the operation of vessels on the open sea, though important, can be satisfied using less intrusive, practical alternatives such as checkpoints, area warrants, or acting only when a violation has been observed. Accordingly, the court should find that the Petitioner's Fourth Amendment right against unreasonable searches and seizures was violated by the random, unlawful boarding and searching of his boat by state officers.

For these reasons, Petitioners respectfully urge the Court to grant the Petition for Writ of Certiorari to the Georgia Supreme Court.

Respectfully submitted,

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